

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA
Title III

Case No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor.

PROMESA
Title III

Case No. 17 BK 4780-LTS

**Court Filing Relates Only to
PREPA and Shall Only Be Filed
in Case No. 17 BK 4780-LTS**

**DECLARATION OF OMAR J. MARRERO IN SUPPORT OF PREPA'S MOTION FOR
ENTRY OF AN ORDER ALLOWING ADMINISTRATIVE EXPENSE CLAIM FOR
COMPENSATION FOR FRONT-END TRANSITION SERVICES UNDER
PUERTO RICO TRANSMISSION AND DISTRIBUTION SYSTEM
OPERATION AND MAINTENANCE AGREEMENT WITH LUMA ENERGY**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Pursuant to 28 U.S.C. § 1746, I, Omar J. Marrero, hereby declare as follows under penalty of perjury under the laws of the United States of America:

1. I submit this declaration in support of *PREPA's Motion for Entry of an Order Allowing Administrative Expense Claim for Compensation for Front-End Transition Services Under Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement with LUMA Energy* (the "Motion"). I am over 18 years of age, have personal knowledge of the matters set forth herein, and if called upon and sworn as a witness, I could and would testify competently thereto.

2. I am the Executive Director, Chief Executive Officer, and Chairman of the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF"), the Chief Financial Officer of the Commonwealth of Puerto Rico, the Governor's Representative and *Ex-Officio* Board Member of the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"). AAFAF is the "fiscal agent, financial advisor, and reporting agent of all entities of the Government of Puerto Rico" and the "government entity responsible for the collaboration, communication, and cooperation" between the Puerto Rico Government and the Oversight Board.²

3. I am also the Chairman of the Governing Board of the Puerto Rico Public-Private Partnership Authority (the "P3 Authority") and a member of the Partnership Committee (the "Partnership Committee") established by the P3 Authority pursuant to Section 5 of the Puerto Rico Electric System Transformation Act, Act No. 120-2018, as amended ("Act 120-2018"). The P3 Authority promotes ongoing collaboration between Puerto Rico government entities and the

² See Puerto Rico Fiscal Agency and Financial Advisory Authority Act, Act 2-2017, § 5(a).

private sector and is the entity entrusted with overseeing the negotiation of private sector partnership contracts.³

4. Among other roles, I have previously served as the Executive Director of the P3 Authority, Vice President of the Board of Directors of PREPA, the Governor's Authorized Representative before the Federal Emergency Management Agency ("FEMA"), Executive Director of the Central Office of Recovery, Reconstruction and Resiliency ("COR3"), and Executive Director of the Puerto Rico Ports Authority.

5. In my former role as the Executive Director of the P3 Authority and in my current role a member of the Partnership Committee, I personally participated in the public bidding process that culminated in the selection of LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA Energy") to operate PREPA's transmission and distribution system (the "T&D System"). The Partnership Committee was charged with evaluating and selecting qualified proponents and establishing and negotiating the terms of the O&M agreement consistent with applicable legal requirements, including Act No. 120-2018 and the Puerto Rico Energy Policy Act, Act No. 17-2019. The Partnership Committee consisted of myself, as Executive Director of AAFAF⁴; Jose Ortiz, PE, the Executive Director of PREPA; Ralph Kreil, PE, the President of the PREPA Board of Directors; Edison Avilés, PE, Esq., the Chairman of the Puerto Rico Energy Bureau ("PREB"), and Ottmar Chavez, the Executive Director of COR3.⁵

6. The Partnership Committee's decision to award the operation and maintenance ("O&M") agreement to LUMA Energy was the culmination of an 18-month public bidding process

³ See the Puerto Rico Private-Public Partnerships Act, Act No. 29-2009, as amended, "Act 29-2009"), § 6

⁴ I became a member of the Partnership Committee on July 30, 2019, as a result of my appointment as Executive Director of AAFAF.

⁵ Ottmar Chavez became a member of the Partnership Committee on September 9, 2019, replacing Jorge Morales, a government official appointed to the Partnership Committee.

coordinated by the P3 Authority in cooperation with the Oversight Board, AAFAF, and PREPA. The public bidding process has been employed by the P3 Authority for other Puerto Rico public-private partnerships and has been praised as a transparent and robust process. The details of the bidding process for the T&D Contract and the Partnership Committee's reasoning for selecting LUMA Energy are explained in detail in the May 15, 2020 Partnership Committee Report recommending that the board of directors for the P3 Authority award the O&M Agreement to LUMA Energy (the "Partnership Committee Report"). The Partnership Committee Report is publicly available on the P3 Authority's website⁶ and is attached hereto as **Exhibit A**.

7. At the culmination of the process, the Partnership Committee selected LUMA Energy as the winning bidder because LUMA Energy submitted the best proposal, offering the most competitive pricing on the best available terms. In particular, LUMA Energy's proposal (i) provided an in-depth approach to performing the O&M services; (ii) included a fully developed Front-End Transition Plan with a proposed timeline and an operator recruitment and staffing plan that identified the specific individuals who would be filling each role; (iii) generally accepted the Government's approach to performance metrics and indicated a willingness to work collaboratively with PREB; and (iv) committed to develop best-in-class training programs. In addition, LUMA Energy's fee proposal had a net present value over the contract term of close to \$30 million less than the competing proposal, in addition to having higher liability caps and liquidated damages payments.

8. As a member of the Partnership Committee, I personally voted to approve the Operation and Maintenance Agreement that was eventually memorialized as the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, dated June 22,

⁶ <http://www.p3.pr.gov/prepa-transformation.html>

2020, entered into by and among PREPA, the P3 Authority, and LUMA Energy, as supplemented (the “T&D Contract”). The T&D Contract has been approved by the Board of Directors of the P3 Authority, the Oversight Board, the Governing Board of PREPA — including by the independent members of PREPA’s Governing Board who were appointed for their industry expertise — PREB, and the Government of Puerto Rico pursuant to the procedures set forth in Act 2-2009. A true and correct copy of the T&D Contract is attached hereto as **Exhibit B**.

I. THE T&D CONTRACT PROVIDES ENORMOUS BENEFITS TO PREPA AND ITS STAKEHOLDERS.

9. For decades, Puerto Rico has suffered from unreliable and costly electric power. PREPA has faced significant challenges to its operations, including an inherently deficient energy infrastructure, an aging and deteriorated T&D System, high and volatile fuel prices, high vulnerability to weather conditions, and a lack of access to capital markets, among other things. The catastrophic damage caused by hurricanes Irma and Maria, which struck within weeks of each other in 2017, exacerbated PREPA’s challenges and created new ones. In light of these substantial challenges, PREPA has underperformed relative to industry standards. *See* Ex. A at 95-96.

10. The Government of Puerto Rico has determined that a complete transformation of the T&D system is required to bring safe, reliable, modern T&D System services to PREPA’s ratepayers. One of the Government’s key initiatives for PREPA’s transformation is the selection of a qualified private operator for the T&D System. Hiring a third party operator brings substantial benefits to the economy and to PREPA’s ratepayers including implementing industry best practices and reducing operating costs.

11. As a member of the Partnership Committee and as Executive Director of AAFAF, as Fiscal Agent for PREPA, I supported the selection of LUMA Energy and the T&D Contract

because transition of control over PREPA's T&D System to LUMA Energy is the crucial first step in the overall transformation of Puerto Rico's energy sector. The T&D Contract will transition operation of the T&D System to LUMA Energy, who in turn will transform PREPA's operations to implement industry best practices and partner with PREPA to obtain and administer federal funding and oversee capital improvements to modernize and revitalize the T&D infrastructure.

12. More specifically, the T&D Contract is intended to:

- Transform PREPA's T&D System into a modern, sustainable, reliable, efficient, cost-effective, and resilient electric system consistent with prudent utility practices in order to increase electric service quality;
- Deliver low-cost electricity to ratepayers of Puerto Rico;
- Increase T&D System resiliency, achieving performance in line with codes, specifications and standards consistent with mainland U.S. electric utilities;
- Increase T&D System reliability;
- Deploy new technologies; and
- Implement industry best practices and operational excellence through managerial continuity and long-term planning.

See Ex. A at 27-29.

13. Securing a commitment from LUMA Energy to assume these responsibilities is an enormous benefit to PREPA and to the people of Puerto Rico. LUMA Energy ((formed by Canadian Utilities Limited (as successor to its affiliate, ATCO Ltd.) ("ATCO") and Quanta Services, Inc. ("Quanta") to represent their consortium with Innovative Emergency Management, Inc. ("IEM")) has a proven track record and is uniquely equipped to meet the host of challenges PREPA faces and help transform PREPA into a customer-centric and financially sustainable utility that provides affordable, reliable, resilient services to the citizens and businesses of Puerto Rico, This is evidenced by the following qualifications LUMA Energy presented to the Partnership Committee:

- ATCO operates T&D systems, natural gas utilities, and a rapidly growing competitive retail energy business. It provides electricity and natural gas utility services to more than two million customers in Canada and Australia, along with fit-for-purpose, low-carbon, behind-the-fence energy solutions for industry and municipalities. ATCO owns and operates more than 54,000 miles of T&D lines in Alberta, Canada, delivering electricity in a sprawling service territory covering 165,000 square miles.
- Quanta is a leading infrastructure solutions provider for the electric power industry in North America, with over 46,000 employees and approximately \$12 billion in annual revenues.
- IEM is a comprehensive emergency management and disaster recovery firm that has supported over 300 state and local jurisdictions with a wide range of emergency management services. IEM has overseen over \$51 billion in disaster recovery programs, including in connection with hurricane Harvey in Texas, hurricanes Irma, Matthew, and Hermine in Florida, hurricane Matthew in North Carolina, hurricane Sandy in New Jersey and New York and the severe floods of 2016 in Louisiana.

See Ex. A at 3.

14. The LUMA Energy consortium's vast experience and resources will be invaluable to the Government's efforts to transform PREPA into a more resilient, affordable, and financially stable energy provider. The role of LUMA Energy is strategically important to depoliticize PREPA and provide continuity and professional management centered on planning and execution of initiatives in the energy sector. Given the consortium's proven collective experience and capacity to manage large federally-funded projects, LUMA Energy has the project management capacity needed to execute important reconstruction work on the island's grid. Specifically, LUMA Energy's role in this regard reassures funding agencies that there is an operator with proven and verifiable experience to deploy grid modernization plans effectively, efficiently and in a compliant manner. In addition, delivering major grid modernization capital projects on time and on budget will be essential to protect Puerto Rico from future devastation from hurricanes and other natural disasters. Furthermore, the O&M Services will also help improve everyday service quality, safety, and reliability.

15. In sum, the O&M Services LUMA Energy has agreed to provide will benefit PREPA, its customers, and Puerto Rico as a whole because the services will put PREPA's power grid on a path to becoming a more modern, sustainable, reliable, efficient, cost-effective, and resilient T&D System.

16. Moreover, LUMA Energy has demonstrated a commitment to this future beyond the 15-year term of the T&D Contract. In particular, LUMA Energy demonstrated a its dedication to training and knowledge transfer through its commitment to build and manage, at its cost and expense, a lineworkers college in Puerto Rico and helping PREPA become a self-sustaining standalone utility by the end of the contract term, thereby reducing the need for successive agreements.

II. THE BENEFITS UNDER THE T&D CONTRACT CANNOT BE REALIZED WITHOUT THE FRONT-END TRANSITION SERVICES

17. Before LUMA Energy can fully assume its responsibilities to operate and improve the T&D System, PREPA will need to transition responsibilities to LUMA Energy. This transition of the T&D System is complicated and will take time. Accordingly, the T&D Contract sets forth a detailed Front-End Transition Plan that provides for a Front-End Transition Period during which LUMA Energy will provide fundamental Front-End Transition Services.

18. As set forth in the T&D Contract, the Front-End Transition Plan includes:

- Developing a post-commencement strategy that appropriately balances near- and longer-term initiatives through improved capital planning;
- Immediately addressing the urgent issues of storm response planning as well as critical safety, customer service and operational deficiencies;
- Working towards accelerating (where reasonably practical) the timing for completion of the various work streams set out in the T&D Contract by drawing upon LUMA Energy's equity holders to supplement the transition team during the initial months;

- Incorporation of procurement best practices and the development of procurement manuals for non-federal and federal funds, enabling improved transparency and confidence in the efficiency and allocation of those funds;
- Drawing upon LUMA Energy's equity holders' proven internal processes that have been employed to support such equity holders' respective acquisition strategies and their collaborative, proven P3 model;
- Development of performance metrics in coordination with PREB, which will provide direct accountability for customer service, reliability, and safety for the first time at PREPA;
- Working to develop an internal culture around project management skills, accountability, elevating issues as they occur, developing work-around solutions and communicating frequent status updates to internal and external stakeholders and customers; and
- Developing a communication plan that works to create a well-orchestrated and consistent message to LUMA Energy's employees regarding expectations, as well as the benefits (training, safety, compensation) of working for LUMA Energy.

See Ex. B, Annex II.

19. The parties have estimated that the Front-End Transition Period will last approximately twelve months, and the current estimate for the total aggregate amount of the Front-End Transition Service Fee (including the fixed fee component) is \$136,351,930. On June 22, 2020, PREPA funded the amount of \$59,374,000 to the designated account for use toward this payment. PREPA currently estimates that the balance of the Front-End Transition Service Fee is approximately \$77 million, which amount might be higher or lower depending on several factors, including whether LUMA Energy, the P3 Authority and PREPA are prepared to have LUMA Energy commence O&M Services within less than one year, or commencement is delayed beyond one year.

20. LUMA Energy will provide extensive services in exchange for the Front-End Transition Service Obligations (as defined in the Motion). The Front-End Transition Services include mobilization of the LUMA Energy transition team, transition of management, mobilization of employees and establishment of benefit plans for employees of LUMA Energy, information

technology transition and development, development of a system remediation plan and initial operating and capital budgets, preparation to take over customer services and billing and other financial management functions, preparing to manage federal funding, increasing emergency response preparedness, and assessing the chain of supply for fuel and power. *See* Ex. B, Annex II.

21. The performance of these services is an essential prerequisite to LUMA Energy's ability to assume full control over the T&D System and the commencement of the O&M Services. Without these services PREPA, PREPA's stakeholders and the people of Puerto Rico cannot realize the benefits of the T&D Contract.

22. Moreover, during the Front-End Transition Period, and even before assumption of full O&M Services, PREPA expects to realize significant benefits from the Front-End Transition Services, including: (i) locating inefficiencies in the T&D System; (ii) identifying and implementing non-personnel related cost-saving measures; (iii) preparing for management of federal funding; (iv) assessing and beginning to improve the chain of supply for fuel and power; and (v) supporting privatization efforts regarding PREPA's generation assets.

23. LUMA Energy has identified several opportunities that will benefit PREPA early in the contract term, including:

- FEMA Funding – (i) reviewing current project worksheets for federal funding in order to identify areas of quick improvement (including developing cost estimates and designating quick projects) and (ii) re-establishing full processes and relationships with FEMA and COR3, breaking loose FEMA funding (in addition to that already obligated when LUMA Energy signed the O&M Agreement) in order to allow for immediate work on critical capital projects.
- Emergency Preparedness and Response – providing skilled emergency management resources to assist PREPA in reviewing and executing their emergency response drills and plans ahead of and during the next hurricane season. In addition, Quanta committed to making emergency resources available for restoration, if needed, during the Front End Transition Period while working within

the Edison Electric Institute's mutual aid processes.

- Lineworkers College – break ground on the facility for the college and begin enrolling students in classes. This facility would be open to any and all utility workers thus allowing for a sharing of best practices and learning, which has been historically difficult for PREPA workers.
- Reliability Programs – initiate improvements in street lighting, vegetation management, and the implementation of a smart meter program to help with fast restoration and improved billing.
- Voice of Customer and Other Customer Service Programs – (i) help PREPA implement cloud-based call center technology and (ii) launch voice of customer efforts (including by (A) surveying customers to understand satisfaction levels, (B) developing a comprehensive initial employee satisfaction survey and planning for enterprise-wide participation, (C) mapping the customer journey by customer class to identifying gaps in existing processes, (D) evaluating existing customer service performance metric data collection and capabilities, (E) assessing credit and collection processes and methods of debt recovery, and (F) evaluating and developing a plan for digital delivery of customer experience).

24. As the Executive Director of AAFAF, the fiscal agent for PREPA, I have determined that the improvements in operation of the T&D System that LUMA Energy will bring to PREPA – including during the Front End Transition and in the early contract period and including significant improvements in reliability of power, customer service and collections, resiliency of the T&D system and safety to PREPA's workers – will greatly improve PREPA's operations and financial condition to the benefit all of PREPA's stakeholders. The T&D Contract is a critical step in transforming PREPA and Puerto Rico's energy sector and modernizing its power grid.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 7th day of July 2020 at San Juan, Puerto Rico.



Omar J. Marrero, Esq.